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1 You have just heard both layers making their
2 final arguments to you in which they urged you to make
3 certain inferences and conclusions which they want you to
4 reasonably and logically draw from the evidence in the
5 case.

6 As I have instructed you from the beginning of
7 the trial, these summations by the lawyers are not
8 evidence. It is the function of the jury to draw it's own
9 inference and conclusion from the evidence as you recollect
10 the evidence and as you find the evidence credible and
11 believable.

12 As I indicated to you prior to the summation
13 by the lawyers, you are at liberty to adopt those
14 inferences, conclusions, and arguments of the lawyers which
15 you find persuasive and to reject those which you do not
16 agree with or do not find persuasive.

17 As I stated to you at the beginning of the
18 trial, you are the judges of the facts. I am the Judge of
19 the law. You must accept the law as I instruct you,
20 whether you agree with the law or not.

21 I have made various rulings on objections made
22 by either lawyer and on other areas of the law. You must
23 not infer anything from these rulings, nor from anything I
24 may have said during the trial.

25 Further, you must not draw any inference or

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1 conclusion from an answer which I did not allow to be
2 answered or from any testimony which I ordered stricken
3 from the record.

4 Neither by these instructions, nor by my
5 rulings or remarks that I have made do I mean to indicate
6 any opinion as to the facts or as to what your verdict
7 should be.

8 As triers of the fact, it is up to you to
9 determine whether to believe a witness, and it is up to you
10 to determine how much of that witness' testimony to accept
11 and how much to reject.

12 You must use your common sense in evaluating
13 all testimony in the same way you apply it in your everyday
14 lives to determine who is telling you the truth and who is
15 telling you something less than the full truth.

16 It is your duty to determine the facts and to
17 determine them only from the evidence in the case. You are
18 to apply the law to the facts and that way decide the case.

19 You must not be governed or influenced by
20 sympathy or prejudice for or against any party in this
21 case. Your verdict must be based upon the evidence and not
22 upon speculation, guess, or conjecture.

23 As you saw each lawyer question witnesses, on
24 occasion, I also questioned a witness. You are instructed
25 not to give any different weight to testimony elicited by

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1 the Assistant District Attorney and by the defense attorney
2 than you give to testimony elicited from me. In other
3 words, do not attach any special weight to any testimony
4 simply because I asked a question.

5 There's some more instructions which I gave at
6 the beginning of the trial which I'm going to repeat now.
7 First, you heard me at the beginning of the trial refer to
8 the accusatory instrument which stated the offenses the
9 defendant was alleged to have committed.

10 Again, this accusatory instrument is nothing
11 more than a piece of paper containing an accusation. It is
12 not proof of anything, nor is it evidence of anything. It
13 is merely a device required by the law to inform the
14 defendant of the charges against him.

15 Second, the People have the burden of proof.
16 The defendant has no burden of proof and is not required to
17 do anything to prove his innocence. The defendant has the
18 option of just sitting back and not doing a thing.

19 Why?

20 Because the defense has no burden of proof,
21 and the defendant is presumed innocent.

22 The defendant is not required to put on a
23 defense or call any witnesses, because of the presumption
24 of innocence. In a case where the defendant chooses not to
25 take the stand to testify in his behalf, you may not draw

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1 any negative inference from that. In other words, you may
2 not hold that against the defendant.

3 The defendant is not required to put on a
4 defense or call any witnesses, because of the presumption
5 of innocence. Since the defendant did not take the stand
6 to testify in his own behalf in this case, I now instruct
7 you that you may not draw any negative inference from that.
8 In other words, you may not hold that against the
9 defendant.

10 The burden of proof never shifts. The burden
11 of proof remains with the People throughout the trial the
12 same way the presumption of innocence remains with the
13 defendant from the beginning of the trial, and it is not
14 removed unless there comes a time when during your
15 deliberations you are convinced that the People have proven
16 the defendant's guilt beyond a reasonable doubt.

17 Therefore, if, in your mind, during your
18 deliberation, the People have not met their burden of proof
19 and the presumption of innocence has not been overcome by
20 proof which convinces you beyond a reasonable doubt of the
21 defendant's guilt, then you must find the defendant not
22 guilty.

23 If, on the other hand, in your mind, during
24 your deliberations, the People have met their burden of
25 proof and the presumption of innocence has been overcome by

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1 proof which convinces you beyond a reasonable doubt that
2 the defendant is guilty, then you must find the defendant
3 guilty.

4 Third, there's a standard of proof. Again,
5 the People are required to prove the defendant's guilt
6 beyond a reasonable doubt. This doubt does not require the
7 People to prove the defendant's guilt beyond all doubt or
8 to a mathematical certainty.

9 The People do, however, have to prove the
10 defendant's guilt beyond a reasonable doubt. A doubt is an
11 actual doubt which you have after you have given
12 consideration to all of the evidence in this case.

13 If, after carefully weighing and considering
14 all of that evidence, you feel uncertain and not fully
15 convinced of the defendant's guilt and you are satisfied in
16 entertaining such doubt, you are acting as a reasonable
17 person should act in a matter of this importance, and then
18 that is a reasonable doubt of which the defendant is
19 entitled. If you entertain such a doubt of the defendant's
20 guilt, you must find the defendant not guilty.

21 If, on the other hand, the evidence convinces
22 you that the defendant is guilty beyond a reasonable doubt,
23 you must find the defendant guilty.

24 A doubt is not a reasonable doubt if instead
25 of being based on the nature and quality of the evidence or

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1 based on the lack of evidence, the doubt is based on a
2 guess or a whim or speculation unrelated to the evidence.
3 Reasonable doubt may be found not only in the evidence, but
4 in the lack of evidence in the case.

5 In a few minutes I will be instructing you
6 regarding the laws as it relates to the charges in this
7 case. In those instructions, I'll tell you about each
8 element of the offenses charge.

9 What you need to know now is that this burden
10 of proving the defendant's guilt beyond a reasonable doubt
11 attaches to each and every element of each offense charged.

12 Finally, with regard to this part of my
13 instruction, you are instructed not to consider or
14 speculate on matters concerning possible sentencing or
15 punishment the defendant may face if convicted. You must
16 not discuss these matters, nor must your deliberations in
17 anyway be influenced by such matters. Prejudice and
18 sympathy have no part in your deliberations.

19 This concludes my instruction to you regarding
20 the general principles of law and the constitutional
21 safeguards which are applicable to all criminal cases.

22 Now, I'll instruct you concerning evidence.

23 Evidence consists of oral testimony under
24 oath, stipulations by the parties, and physical exhibits
25 which during the trial were introduced by either side and

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1 which the Court allowed into evidence.

2 Questions that were asked by either lawyer or
3 even by me are not in and of themselves evidence. Only
4 questions which are coupled with answers are evidence.
5 Therefore, you may not infer any fact from the mere asking
6 of a question.

7 Any testimony of a witness which I ordered
8 stricken from the record or any exhibits which were marked
9 for identification, but never allowed into evidence, are to
10 be totally disregarded by you. Comments or remarks made by
11 either lawyer are not evidence and, therefore, must be
12 disregard by you.

13 The People and the defendant may, under our
14 law and as a matter of right, call and examine witnesses.
15 When these witnesses testify, the other party as a right to
16 cross examine. There's no duty whatsoever on the defense
17 to call any witness, since, as I have previously explained,
18 the burden is on the People to prove each and every
19 essential element of the offenses charged beyond a
20 reasonable doubt, and this burden never shifts.

21 As judges of the facts, it is up to you to
22 determine the alternate issue of fact, whether the People
23 have proven the defendant's guilt of these charges beyond a
24 reasonable doubt. This determination will turn upon your
25 estimate of the credibility of each witness' testimony and

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1 the weight to be accorded to such testimony.

2 The credibility of each witness is your
3 determination. You must determine whether each witness who
4 testified did so truthfully or whether any witness
5 testified falsely.

6 You must decide whether a witness's
7 recollection of the events about which that witness
8 testified is accurate and reliable or inaccurate and
9 unreliable.

10 In order to make this judgment, I ask you to
11 draw upon your experience in your everyday lives. In your
12 everyday lives, you make judgments concerning the
13 reliability of statements made to you by others. The same
14 way you do this in your everyday lives you should apply in
15 your deliberations as jurors.

16 There are a few tests which you may wish to
17 use. For example, is the witness an interested or
18 disinterested witness; is the testimony of the witness
19 plausible and, therefore, likely to be true or is it
20 implausible and, therefore, unlikely to be true; is the
21 testimony of the witness consistent with other evidence in
22 the case; did the witness strike you as a person being
23 frank, open, and certain or evasive, deceptive, or unsure;
24 did the witness' testimony as to events appear to be
25 accurate, or did it appear to be hazy; how did the

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1 witness's demeanor appear to you as you observed the
2 witness testify.

3 Also, should you, in the course of your
4 deliberation, conclude that any witness has intentionally
5 testified falsely to a material fact during the testimony,
6 you may disregard all of that witness's testimony on the
7 principle that anyone who testifies falsely as to one
8 material fact might also testify falsely as to other
9 material facts.

10 However, you are not required to find such a
11 witness as totally unworthy of being believed. You may
12 accept a portion of that witness' testimony that you
13 believe to be true and reject the portion that you conclude
14 to be false.

15 The defendant did not testify in this case.
16 Again, I charge you that the fact that the defendant did
17 not testify is not a factor from which any inference
18 unfavorable to the defendant may be drawn.

19 Police officers testified in this case. You
20 should use the same tests in evaluating the testimony of
21 police officers as you will use in evaluating the testimony
22 of any other witnesses. The mere fact that those witnesses
23 are police officers does not require you to give their
24 testimony any greater or lesser credibility than you would
25 afford to any other witness.

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1 You will recall that Kyra Keblish, a
2 criminalist, testified about certain scientific matters
3 concerning DNA testing and gave an opinion as to the
4 matters about which she testified.

5 You will also recall that Alice Olosunda, a
6 registered nurse, testified about certain medical matters
7 involving the science of nursing, mid-wifery, sexual
8 assault forensic examination, and gave an opinion as to the
9 matters about which she testified.

10 Ordinarily, a witness is limited to testifying
11 about facts and is not permitted to give an opinion.
12 Where, however, scientific, medical, technical, or other
13 specialized knowledge will help the jury understand the
14 evidence or to determine a fact in issue, a witness with
15 expertise in a specialized field may render opinions about
16 such matters.

17 You should evaluate testimony of any such
18 witness just as you would the testimony of any other
19 witness. You may accept or reject such testimony in whole
20 or in part, just as you may with respect to the testimony
21 of any other witness.

22 In deciding whether or not to accept such
23 testimony, you should consider the following: The
24 qualifications and believability of that witness; the facts
25 and other circumstances upon which that witness' opinion

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1 was based; the accuracy or inaccuracy of any assumed or
2 hypothetical fact upon which the opinion was based; the
3 reasons given for the witness' opinion; and whether that
4 witness' opinion is consistent or inconsistent with other
5 evidence in the case.

6 During the course of this trial, the Court has
7 received and marked into evidence a number of exhibits.
8 Those exhibits are 1, a diagram; 2, five photographs on a
9 board; 3, eight photographs on a board -- there's a list,
10 and we need to get the most recent version of that list.

11 I'll start all over. 1, a diagram, which is a
12 diagram of the complainant's apartment; 2, five photographs
13 on a board; 3, eight photographs on a board; 4, six
14 photographs on a board; 5, the duvet; 6, a robe; 7, three
15 photographs, 8, A, C, D, containing a 911 call; 9, a rape
16 kit; 10, a large bag which vouchered the duvet; 11, a
17 street map; 12, DNA files; 13, a chart showing DNA results;
18 14, 15, and 16 are Verizon records; 17, two photographs;
19 18, a Miranda warnings sheet; 19, DNA consent form; 20 a
20 consent to search form; 21, two photographs of a lineup;
21 22, medical records; 23, a diagram of the female genitalia.

22 These exhibits together with the testimony
23 which you heard in this trial constitute the evidence.
24 Please, remember that any exhibits which were marked for
25 identification, but which were not received into evidence,

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1 cannot and must not be considered by you during your
2 deliberations.

3 If during your deliberation you decide that
4 you wish to examine any or all of the exhibits, please,
5 request them in a brief note to the Court.

6 Among the exhibits received into evidence were
7 photographs. These photographs intend to portray various
8 locations or objects relevant to the issues in this case.
9 These photographs were received into evidence to assist
10 you, the jury, in making your evaluation of the testimony
11 relating to these locations, scenes, or objects depicted in
12 them.

13 You are the sole judges of the accuracy of
14 these photographs, and you are the sole judges of the
15 weight to be given to these photographs.

16 At this point, ladies and gentlemen, we turn
17 our attention to the definition and rules applicable to the
18 specific offenses that will be submitted to you for your
19 final determination.

20 Count 1 of the indictment charges the
21 defendant with Burglary in the First Degree. Under our
22 law, a person is guilty of Burglary in the First Degree
23 when that person knowingly remains unlawfully in a dwelling
24 with the intent to commit a crime therein or when in
25 effecting entry or while in the dwelling or in immediate

1 flight therefrom that person uses or threatens the
2 immediate use of a dangerous instrument.

3 Some of the terms used in this definition have
4 their own special meaning in our law. I will now give you
5 the meaning of the following terms -- "dwelling,"
6 "unlawfully," "knowingly," "intent," and "dangerous
7 instrument."

8 A dwelling is a building which is usually
9 occupied by a person lodging therein at night. Where a
10 building consists of two or more units separately secured
11 or occupied, each unit shall be deemed both a separate
12 building in itself and a part of the building.

13 A person remains unlawfully in a dwelling when
14 that person has no license or privilege to remain in that
15 dwelling. To have no license or privilege to remain means
16 to have no right, permission, or authority to do so.

17 A person knowingly remains unlawfully in a
18 dwelling when that person is aware that he or she is
19 remaining in such dwelling without license or privilege to
20 do so.

21 Intent means conscious objective or purpose.
22 Thus, a person has the intent to commit a crime in a
23 dwelling when that person's conscious objective or purpose
24 is to commit a crime in that dwelling.

25 The crime of burglary is separate and distinct

1 from any crime which a person may commit within the
2 dwelling. The crime of burglary is complete when a person
3 knowingly remains in a dwelling unlawfully and does so with
4 the intent to commit a crime in the dwelling, regardless of
5 whether that person ever commits or even attempts to commit
6 any crime in the dwelling.

7 Dangerous instrument means any instrument,
8 article, or substance, including a vehicle, which under the
9 circumstances in which it is used, attempted to be used, or
10 threatened to be used, is readily capable of causing death
11 or other serious physical injury, that is, serious and
12 protracted disfigurement, protracted impairment of health
13 or protracted loss or impairment of the function of any
14 bodily organ. Under that definition, death or other
15 serious physical injury need not be, in fact, caused.

16 In order for you to find the defendant guilty
17 of this crime, the People are required to prove from all of
18 the evidence in the case beyond a reasonable doubt each of
19 the following four elements:

20 One, that on or about March 26th, 2003, in the
21 County of Kings, the defendant, Dennis colon, unlawfully
22 remained in a dwelling located at 1711 East 15th Street,
23 Apartment 1-A in Brooklyn, New York.

24 Two, that the defendant did so knowingly.

25 Three, that the defendant did so with the

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1 intent to commit a crime inside the dwelling.

2 Four, that while in the dwelling or in
3 immediate flight therefrom, the defendant used or
4 threatened the immediate use of a dangerous instrument,
5 namely, a knife.

6 Therefore, if you find that the People have
7 proven beyond a reasonable doubt each of those elements,
8 you must find the defendant guilty of the crime of Burglary
9 in the First Degree as charged in Count 1.

10 On the other hand, if you find that the people
11 have not proven beyond a reasonable doubt any one or more
12 of those elements, you must find the defendant not guilty
13 of the crime of Burglary in the First Degree as charged in
14 Count 1.

15 Count 2 of the indictment charges the
16 defendant with Rape in the First Degree. Under our law, a
17 person is guilty of Rape in the First Degree when he or she
18 engages in sexual intercourse with another person without
19 that person's consent by means of forcible compulsion.

20 I'll now give you the meaning of the following
21 terms used in that definitions -- sexual intercourse
22 without a person's consent and forcible compulsion.

23 Sexual intercourse has it's ordinary meaning
24 and occurs upon penetration, however, slight. Sexual
25 intercourse occurs without a person's consent when it

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1 results from forcible compulsion.

2 Forcible compulsion means to intentionally
3 compel, either by the use of physical force or by a threat,
4 express or implied, which places a person in fear of
5 immediate death or physical injury to himself or herself or
6 in fear that he or she will immediately be kidnapped.

7 In order for you to find the defendant guilty
8 of this crime, the People are required to prove from all of
9 the evidence in the case beyond a reasonable doubt both of
10 the following two elements:

11 One, that on or about March 26th, 2003, in the
12 County of Kings, the defendant, Dennis Colon, engaged in
13 sexual intercourse with Vera Krioutchkova.

14 Two, that the defendant did so without Vera
15 Krioutchkova's consent as a result of the defendant's use
16 of forcible compulsion.

17 Therefore, if you find the People have proven
18 beyond a reasonable doubt both of those elements, you must
19 find the defendant guilty of Rape in the First Degree as
20 charged in Count 2.

21 On the other hand, if you find that the People
22 have not proven beyond a reasonable doubt either one or
23 both of those elements, you must find the defendant not
24 guilty of the crime of Rape in the First Degree as charged
25 in Count 2.

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1 Count 3 charges the defendant with the crime
2 of Sexual Abuse in the First Degree. Under our law, a
3 person is guilty of Sexual Abuse in the First Degree when
4 he or she subjects another person to sexual contact by
5 forcible compulsion.

6 Under our law, it is also an element of this
7 offense that the sexual act was committed without consent.
8 The sexual contact takes place without a person's consent,
9 when the lack of consent results in forcible compulsion.

10 Some of these terms used in this definition
11 have their own special meaning in our law. I'll now give
12 you the meaning of the following terms -- sexual contact
13 without a person's consent and forcible compulsion.

14 Sexual contact means any touching of the
15 sexual or other intimate parts of a person for the purpose
16 of gratifying the sexual desire of either person. It
17 includes the touching of the actor by that person as well
18 as the touching of that person by the actor, whether
19 directly or through clothing.

20 I have previously defined for you the term
21 forcible compulsion. Sexual contact takes place without a
22 person's consent when it results from forcible compulsion.

23 In order for you to find the defendant guilty
24 of this crime, the People are required to prove from all of
25 the evidence in the case beyond a reasonable doubt both of

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1 the following two elements:

2 One, that on or about March 26th, 2003, in the
3 County of Kings, the defendant, Dennis Colon, subjected
4 Vera Krioutchkova to sexual contact by touching his finger
5 to her vagina, and, two, that the defendant did so without
6 Vera Krioutchkova's consent by the use of forcible
7 compulsion.

8 Therefore, if you find that the People have
9 proven beyond a reasonable doubt both of those elements,
10 you must find the defendant guilty of the crime of Sexual
11 Abuse in the First Degree as charged in Count 3.

12 On the other hand, if you find that the People
13 have not proven beyond a reasonable doubt either one or
14 both of those elements, you must find the defendant not
15 guilty of the crime of Sexual Abuse in the First Degree as
16 charged in Count 3.

17 Count 4 of the indictment charges the
18 defendant with the crime of Assault in the Second Degree.
19 Under our law, a person is guilty of Assault in the Second
20 degree when, in the course of and in furtherance of the
21 commission of a felony, which in this case would be the
22 commission of the felonies of Burglary in the First Degree,
23 Rape in the First Degree, Sex Abuse in the First Degree,
24 then that person causes physical injury to another person
25 other than one of the participants in the crime.

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1 Some of the terms used in this definition have
2 their own special meaning in our law. I'll now give you
3 the meaning of the term "physical injury."

4 Physical injury means impairment of physical
5 condition or substantial pain. If you find that physical
6 injury was caused by the defendant, then it does not matter
7 that the physical injury was caused unintentionally or
8 accidentally rather than with an intention to cause
9 physical injury or that it resulted from the victim's fear
10 or fright.

11 I have previously defined for you the
12 underlying felony offenses of Rape in the First Degree,
13 Sexual Abuse in the First Degree and Burglary in the First
14 Degree.

15 In order for you to find the defendant guilty
16 of this crime, the People are required to prove from all
17 the evidence in the case beyond a reasonable doubt the
18 following two elements:

19 One, that on or about March 26th, 2003, in the
20 County of Kings, the defendant, Dennis Colon, committed the
21 crime of Burglary in the First Degree and or Rape in the
22 First Degree and or Sexual Abuse in the First Degree, and,
23 two, that in the course of and in furtherance of the
24 commission of any of the felonies charged, namely, Burglary
25 in the First Degree, Rape in the First Degree, or Sexual

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1 Abuse in the First Degree, the defendant, in the commission
2 of any of those felonies, caused physical injury to Vera
3 Krioutchkova and that Vera Krioutchkova was not a
4 participant in the felony.

5 Therefore, if you find that the People have
6 proven beyond a reasonable doubt both of those elements,
7 you must find the defendant guilty of the crime of Assault
8 in the Second Degree as charged in Count 4.

9 On the other hand, if you find that the People
10 have not proven beyond a reasonable doubt either one or
11 both of those elements, you must find the defendant not
12 guilty of the crime of Assault in the Second Degree as
13 charged in Count 4.

14 Count 5 charges the defendant with the crime
15 of Assault in the Second Degree. I shall now instruct
16 first on the definition of the crime of Assault in the
17 Second Degree which you just heard me do, and then I'll
18 define for you an attempt to commit a crime, and then I
19 shall put both definitions together and list for you the
20 elements of the crime of Attempted Assault in the Second
21 Degree.

22 Under our law, a person is guilty of Assault
23 in the Second Degree when in furtherance of -- I'm sorry --
24 when in the course of and in furtherance of the commission
25 of a felony, which in this case would be the commission of

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1 the felonies of Burglary in the First Degree, Rape in the
2 First Degree, or Sexual Abuse in the First Degree, that
3 person causes physical injury to a person other than one of
4 the participants in the crime.

5 Some of the terms used in this definition have
6 their own special meaning in our law. I'll now give you
7 the meaning of the term "physical injury." Physical injury
8 means impairment of physical condition or substantial pain.

9 If you find that physical injury was caused by
10 the defendant, it does not matter that the physical injury
11 was caused intentionally or accidentally rather than with
12 an intention to cause physical injury or it resulted from
13 the victim's fear or fright.

14 I have previously defined for you the
15 underlying felony offenses of Rape in the First Degree,
16 Sexual Abuse in the First Degree, and Burglary in the First
17 Degree.

18 I'll now define for you what constitutes an
19 attempt to commit a crime. Under our law, a person is
20 guilty of an attempt to commit a crime when with intent to
21 commit a crime he or she engages in conduct which tends to
22 effect the commission of such crime, in this case, the
23 crime of Assault in the Second Degree.

24 Some of the terms used in this definition have
25 their own special meaning in our law. I'll now give you

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1 the meaning of the following term "intent" and "tends to
2 effect."

3 Intent means a conscious objective, or
4 purpose. Thus, a person acts with intent to commit a crime
5 when his or her conscious objective or purpose is to commit
6 that crime.

7 Conduct which tends to effect the commission
8 of the crime means conduct which comes dangerously close or
9 very near to the completion of the intended crime.

10 If a person intends to commit a crime or
11 engages in conduct which carries his or her purpose forward
12 within dangerous proximity to the completion of the
13 intended crime, he or she is guilty of an attempt to commit
14 that crime.

15 It does not matter that the intended crime was
16 not actually committed. The person's conduct must be
17 directed towards the accomplishment of the intended crime.
18 It must go beyond planning and mere participation, but need
19 not be the last act necessarily to effect the actual
20 commission of the intended crime. Rather, the conduct
21 involved must go far enough that it comes dangerously close
22 or very near to the completion of the intended crime.

23 In order for you to find the defendant guilty
24 of the crime of Attempted Assault in the Second Degree, the
25 People are required to prove from all the evidence in the

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1 case beyond a reasonable doubt both of the following two
2 elements:

3 That on or about March 26th, 2003, in the
4 County of Kings, the defendant, Dennis Colon, intended to
5 commit the crime of Assault in the Second Degree, and, two,
6 that the defendant engaged in conduct which tended to
7 effect the commission of that crime.

8 Therefore, if you find that the People have
9 proven beyond a reasonable doubt both of those elements,
10 you must find the defendant guilty of the crime of
11 Attempted Assault in the Second Degree as charged in Count
12 5.

13 On the other hand, if you find that the People
14 have not proven beyond a reasonable doubt either one or
15 both of those elements, then you must find the defendant
16 not guilty of the crime of Attempted Assault in the Second
17 Degree as charged in Count 5.

18 Before you retire to deliberate, ladies and
19 gentlemen, there's a few areas which I need to instruct you
20 on.

21 In order to reach a verdict, each juror must
22 agree to such verdict. You have the duty, as jurors, to
23 consult with each other and to deliberate with a view to
24 reaching an agreement, if it can be done without giving up
25 individual judgment.

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1 As jurors, each one of you must decide the
2 case for yourself, but only after an impartial
3 consideration of the evidence with your fellow jurors.

4 No juror should give up any honestly held
5 conviction as to the weight or effect of the evidence
6 solely because of the opinion of your fellow jurors or for
7 the mere purpose of returning the verdict.

8 During the course of your deliberations, you,
9 as individuals, should not hesitate to re-examine your own
10 views and change your opinion if convinced it is erroneous.

11 If, during the course of your deliberations,
12 your recollection of any part of the testimony should fail
13 or should you find yourself in doubt concerning my
14 instruction to you, you have the option to return to the
15 courtroom for the purpose of having such testimony or
16 instruction read back to you.

17 Your foreperson, Juror No. 1, should write out
18 your request, sign it, and seal the note in the envelope
19 provided to you by the court officer.

20 Give that sealed envelope to the court officer
21 who will deliver the note to me.

22 As soon as the lawyers, the defendant, and
23 court staff are assembled in the courtroom, you will be
24 called back to the courtroom, and I'll promptly respond to
25 your request as indicated.

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1 Certain exhibits have been received in
2 evidence during the course of this trial. They will be
3 available to you for your examination during the course of
4 your deliberation in the jury room.

5 After you have started deliberating, you may
6 request that one or more of the exhibits which were
7 received into evidence be delivered to you in the jury
8 room. In order to get the exhibits delivered to you, make
9 the request to the court officer, and the exhibits will be
10 promptly delivered.

11 During any recess when you are absent from the
12 jury room, all exhibits must be returned to the court
13 officer. When you resume your deliberations, the exhibits
14 will be returned to you.

15 In order to reach a verdict, all 12 members of
16 the jury must agree. Your verdict must be unanimous.
17 Whenever all your members are in agreement on a verdict,
18 you must report your verdict to the Court. When you have
19 reached the verdict, simply tell the court officer that you
20 have reached a verdict, and you will be promptly called
21 back into the courtroom to announce your verdict.

22 Now, since our trial jury is about to retire
23 to deliberate, I charge and I emphasize that there must be
24 no further communications or contacts between the trial
25 jury and the alternate jurors.

- Judge's Final Charge -

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1 The alternate jurors will be provided a
2 private room to await the rendition of the trial jury's
3 verdict. You alternates must not discuss this case between
4 yourself or with anyone else. You are also not to read
5 anything about the case if it were to be reported or to
6 permit anyone to discuss the case with you in your
7 presence, nor are you to form any opinion as to the factual
8 issues in the case, nor are you to form or express any
9 opinion as to the guilt or innocence of the defendant,
10 unless and until such time as you may be required to
11 participate in the trial jury's deliberation.

12 Will the lawyers approach.

13 (Brief discussion held off the record at the
14 Judge's bench.)

15 THE COURT: Alternates, you are going to be
16 discharged with the thanks of the Court. I now ask the
17 court officer to take the alternates.

18 Now, ladies and gentlemen of the jury, I am
19 submitting this case to you for your final deliberation.
20 As I previously stated, the law and your oath require that
21 you render a fair and impartial verdict without fear,
22 favor, or sympathy.

23 Therefore, now take this case and in the
24 fulfillment of your oath and in accordance with the
25 instruction of the Court, render a true and impartial

- Judge's Final Charge -

921

1 verdict.

2 Follow the court officer. Take your books
3 with you.

4 (Whereupon, the jury exits the courtroom.)

5 THE COURT: The jury has left the room.
6 There's a couple of housekeeping matters.

7 Anything from either side?

8 MR. GREENBERG: No:

9 MS. CHANNAPATI: No.

10 THE COURT: We have to get the verdict sheet
11 initialed by each of you. I have to print it out. The
12 clerk has to get one, and you both have to endorse one.

13 THE COURT: All right. The other thing is
14 make sure that we have cellphone numbers. If we have them,
15 fine, and do we have a stipulation that if the jury asks
16 for exhibits they may receive the exhibits without the
17 lawyers being called back?

18 MS. CHANNAPATI: That's fine.

19 MR. GREENBERG: Absolutely, just when we're
20 not here, and we come back.

21 THE COURT: You want to know?

22 MR. GREENBERG: I want to know.

23 THE COURT: You would like to know about it.

24 The verdict sheet is now Court Exhibit No. 1.

25 (Recess taken.)

- Judge's Final Charge -

922

1 THE COURT: Back on the case on trial, and the
2 first thing I'll do is refer to our notes.

3 MR. GREENBERG: Our notes?

4 THE COURT: It's plural, but let's see. I'm
5 trying to put them in order. The first note that we got is
6 today's date, 2:55 p.m. "The jury would like to see the
7 pictures of the knife."

8 The second note we got is 3:38 p.m., "No. 23,
9 diagram of female anatomy. No. 14, 15, 16, Verizon
10 records."

11 4:35, "Detective Harvin's testimony read
12 back."

13 With the request for a read back, the lawyers
14 will consult, and we'll agree upon the read back.

15 Now, let me -- the note came after I called
16 for you, because I have my own issue. In my review of the
17 charges, I now conclude -- the Court changes back and
18 forth, but I have looked at it, and I now conclude that
19 that attempted assault cannot be charged for this crime.

20 So, I would want -- the reason is you have to
21 have the intent in that assault. So --

22 MR. GREENBERG: I see.

23 THE COURT: So, it's no good. I think the way
24 it's set up it would not be repugnant. I would like to get
25 rid of it and give them the four counts since they haven't

- Judge's Final Charge -

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1 rendered a verdict.

2 MR. GREENBERG: With respect to the read back,
3 when you say the attorneys get together.

4 THE COURT: Oh, they look at sections and
5 agree. These are the questions.

6 MS. CHANNAPATI: If they are asking for the
7 whole thing --

8 THE COURT: We'll interpret it as the whole
9 thing. We don't have to get together. It's the whole
10 thing.

11 Logistically, it's going to take quite a time.
12 It's going on 5:00 o'clock. So the question is: Do I do
13 the read back?

14 I thought we could have the read back first
15 thing in the morning and have the jury come back, but I
16 need to know if there's any objection.

17 Off the record.

18 (Brief discussion held off the record.)

19 THE COURT: Back on the record.

20 The Court believes that we should do it in the
21 morning. I know that defense is somewhat, you know,
22 waivering, but I do say that it is well close to 5:00
23 o'clock, and the read back will not be completed until 6:00
24 p.m.

25 It is unlikely this jury intends to stay that

- Judge's Final Charge -

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1 late. I can put on the record we are instructed through
2 our administrators not to stay beyond 5:00 p.m. That is
3 budgetary. It doesn't have anything to do with the case,
4 but we're so instructed, and the reporter told me he has to
5 leave this evening. So we would have to get a new court
6 reporter in and that would be problematically difficult.

7 MR. GREENBERG: Understood.

8 THE COURT: So, with that, now, the question
9 is: How do I tell the jury about this change of verdict
10 sheet tonight?

11 MR. GREENBERG: I would do that as soon as
12 possible.

13 THE COURT: I'll tell them that they don't
14 have to consider that, and I'll give them a new verdict
15 sheet. Counsel, I think I will do a new verdict sheet and
16 let them see it.

17 MR. GREENBERG: Let's do a new sheet and --

18 THE COURT: I'll instruct them, and I'll give
19 it to them in the morning. If I give it to them now, it
20 just confuses things.

21 MR. GREENBERG: We'll fill it out in the
22 morning and give it to them in the morning and instruct
23 them that you're withdrawing that.

24 THE COURT: I've taken the last count off.
25 That doesn't count.

- Judge's Final Charge -

925

1 Okay. We can call for the jury.

2 THE COURT OFFICER: Jury entering.

3 (Whereupon, the jury enters the courtroom and
4 is properly seated.)

5 THE CLERK: All jurors are present.

6 Both sides waive the reading of the roll?

7 MS. CHANNAPATI: So waived.

8 MR. GREENBERG: Yes.

9 THE COURT: Ladies and gentlemen of the jury,
10 I want to put on the record that the Court has received
11 three notes from you today. I have let the lawyers be
12 aware, but I'll just put it on the record.

13 The first note dated today, June 7th, 2:55
14 p.m., "The jury would like to see the pictures of the
15 knife." The second note dated today, 3:38 p.m., it lists
16 certain exhibits, "No. 23, diagram of female anatomy; 14,
17 15, and 16, Verizon records."

18 Those were delivered to you, is that correct?

19 The third note is today's date, 4:35 p.m.,
20 "Detective Harvin's testimony read back."

21 We have discussed that, and it will be a long
22 read back. It will take about an hour, we estimate;
23 therefore, the Court will adjourn for this evening. We'll
24 have the read back first thing in the morning, and you will
25 continue your deliberations, of course.

- Judge's Final Charge -

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1 Now, before I give you my instruction, as you
2 are going to be excused for the evening, but you have
3 commenced your deliberation, so I have, somewhat, a little
4 more detailed instruction.

5 I also should report to you we have examined
6 the verdict sheet and have decided that the last count,
7 which is the attempt count, will not be presented to you;
8 therefore, you will not be deliberating regarding that
9 count, and I'll give you a clean verdict sheet in the
10 morning, which will stop at Count 4.

11 Let me give you my instruction.

12 Ladies and gentlemen of the jury, today the
13 court session is drawing to a close, and I'm about to
14 excuse you for the day.

15 You must return to your jury room at 9:30
16 tomorrow. The law requires that before I excuse you, I
17 review with you the rules that you must follow over the
18 course of this recess.

19 These rules are designed to guarantee the
20 parties a fair trial and are generally the same ones you
21 are required to follow prior to your deliberations, but the
22 law requires that I restate them now in order to emphasize
23 their importance.

24 The reason for this emphasis is that you are
25 at a critical stage. You are in the process of

- Judge's Final Charge -

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1 deliberations, and you are not being sequestered. That
2 means you are not being kept together overnight where we
3 can have greater assurance that you are following the
4 rules.

5 You are being permitted to go home after
6 deliberations have begun. There might be a greater
7 temptation, for example, to discuss the case with someone
8 else or to go to the scene. You must resist those
9 temptations.

10 To discuss the case with someone else or to
11 visit the scene would not only violate my order, but would
12 also violate the oath which you took to follow the rules.

13 Those rules are deliberation must be conducted
14 only in the jury room when all the jurors are present;
15 therefore, all deliberations must now cease and must not be
16 resumed until all of you have returned tomorrow and are
17 together again in the jury room.

18 During this recess, do not converse either
19 amongst yourselves or with anyone else anything related to
20 or about this case. You will remain under an obligation
21 not to request, accept, agree to accept or discuss with any
22 person the receiving or accepting of any payment or benefit
23 in return for supplying any information concerning this
24 trial.

25 You must promptly report directly to me any

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1 incident within your knowledge involving an attempt by any
2 person improperly to influence you or any member of the
3 jury.

4 You must not visit or view the premises or
5 place where the charged crime was allegedly committed or
6 any other premises or place that was involved in the case.

7 You must not read, view, or listen to any
8 accounts or discussions of the case that might be reported
9 in the news media, such as, newspapers, television, radio,
10 Internet, or any other newspaper.

11 You must not attempt to research any fact or
12 issue of law related to this case whether by discussion or
13 by researching in a library or the Internet or any other
14 means.

15 I know you understand these rules are
16 important, and that in accordance with your oath and
17 promise to the Court, you will follow them.

18 I remind you that you are to return tomorrow
19 at 9:30 a.m. promptly, please, because like the opera, the
20 show cannot get started until everyone is here.

21 You will now be leaving your books for the
22 court officers. You'll get them in the morning

23 THE COURT OFFICER: Step out, please.

24 THE COURT: It's just the books. They keep
25 control of them.

- Judge's Final Charge -

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1 (Whereupon, the jury exits the courtroom.)

2 THE COURT: The jury has left the room. We're
3 adjourned until tomorrow at 9:30.

4 MR. GREENBERG: Thank you.

5 (Whereupon, the case on trial was adjourned to
6 June 8th, 2006.)
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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CRIMINAL TERM - PART: 3
-----X

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

INDICTMENT NO.
2518/2003

5 DENNIS COLON,

6 Defendant.

-----X
7 320 JAY STREET
8 BROOKLYN, NEW YORK 11201
9 JUNE 8, 2006

10 B E F O R E:

11 HONORABLE JAMES P. SULLIVAN,
Justice and jury

12 A P P E A R A N C E S:

13 CHARLES J. HYNES, ESQ.
District Attorney, Kings County
14 BY: ANITA CHANNAPATI, ESQ.
BY: LOUISE COHEN, ESQ.
15 Assistant District Attorney

16
17 HARLAN GREENBERG, ESQ.
DENNIS PETRE
18 30 Vesey Street, 15th Floor
New York, New York
19 Attorneys for the Defendant

20 William Cardenuto
21 Senior Court Reporter
22
23
24
25

- Proceedings -

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1 THE COURT: On the record.

2 Case on trial.

3 I've looked at the transcript, and there's
4 a couple of issues.

5 Page 760, at Line 12:

6 "QUESTION: What did he say?

7 "ANSWER: I asked him if he knew a young lady
8 by the name of Vera who lived at 1711 East 15th Street, a
9 Russian female, and he told me, 'No,' he didn't know anyone
10 by the name of Vera, and he didn't know anyone at that
11 location. I asked him if he raped anyone at that location,
12 and he told me, 'No.'

13 "MR. GREENBERG: Objection.

14 "THE COURT: Overruled.

15 "MR. GREENBERG: Your Honor, may I?"

16 And then there was a discussion, and I,
17 ultimately, sustained the objection.

18 So the question is: Do we read what she said
19 before the objection or not?

20 MR. GREENBERG: I certainly submit to the
21 Court that I did not receive notes of that.

22 MS. CHANNAPATI: Your Honor, the People agree.

23 THE COURT: The People agree.

24 Then that's done.

25 There's another place that comes up. That's

- Proceedings -

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1 at Page 800. I'll start -- I'll start at Line 4.

2 "QUESTION: Is that the only thing that the
3 defendant said to you that day?

4 "ANSWER: No, it's not.

5 "QUESTION: What else did he say?

6 "ANSWER: In regard to Russian massage
7 parlors?

8 "QUESTION: No. I'm talking about the entire
9 statement.

10 "ANSWER: Okay. He told me he did not know
11 the complainant. He didn't know anyone that lived at that
12 location. He frequented Russian massage parlors and
13 sometimes he meets females for" --

14 "MR. GREENBERG: Objection.

15 "THE COURT: Sustained."

16 MS. CHANNAPATI: I would say we can strike
17 "and sometimes he meets females for." Why don't we do
18 that, after the word "parlors."

19 THE COURT: After the word "parlor."

20 "He told me he did not know the complainant.
21 He didn't know anyone that lived at that location. He
22 frequented Russian massage parlors."

23 MR. GREENBERG: That's the sum and substance
24 of the statement, except reversed.

25 THE COURT: There are several places where the

1 word "victim" is used, either by an inadvertence by the
2 People in questions or by the detective, and, of course,
3 she's not always instructed not to use the word "victim."

4 In these cases, the People believe we should
5 read it as it was rather than amend each time?

6 MR. GREENBERG: There's a number of times
7 where there were objections, and I believe that will be
8 there.

9 THE COURT: With that, we would be giving the
10 jury a new verdict sheet. It stops at No. 4 rather than
11 going to No. 5.

12 Just for the record, we got the Burglary in
13 the First Degree, and that relates to the allegation of
14 using a knife, and that's Count 1.

15 We got Rape in the First Degree, that's Count
16 3, and then we got Sexual Abuse in the First Degree, which
17 relates to finger to vagina, and that's Count 5, and,
18 finally, we got Assault in the Second Degree, which is
19 Count 6.

20 We'll put on the record, with regard to the
21 verdict sheet, that we are substituting this new verdict
22 sheet, which is dated today, June 8th. The other one was
23 dated June 7th, and that will be the replacement in the
24 court exhibits as Court Exhibit No. 1.

25 On consent?

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1 MS. CHANNAPATI: Yes.

2 MR. GREENBERG: Yes.

3 THE COURT OFFICER: Jury entering.

4 (Whereupon, the jury enters the courtroom and
5 is properly seated.)

6 THE CLERK: All jurors are present.

7 Do both sides waive the reading of the role?

8 MR. GREENBERG: Yes.

9 MS. CHANNAPATI: So waived.

10 THE COURT: Ladies and gentlemen of the jury,
11 yesterday you commenced your deliberation, and you asked
12 for a read back of Detective Harvin's testimony, and so the
13 reporter is here to give you that read back. After the
14 read back is concluded, you will go back to the jury room
15 to resume your deliberations.

16 As I indicated, you will have a changed
17 verdict sheet. It's dated today, and it has four counts
18 now rather than the five. We discussed that last night.

19 Now, we're ready for the read back.

20 (Whereupon, the testimony of Detective Harvin
21 was read back to the jury.)

22 THE COURT: The reporter indicates that he has
23 finished reading, and so you will now retire again to the
24 jury room to continue your deliberations.

25 (Whereupon, the jury exits the courtroom.)

- Proceedings -

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1 THE COURT: We are adjourned until we hear
2 from the jury.

3 (Recess taken.)

4 THE COURT: Back on the record.

5 Court Exhibit No. 4. So, I guess it's note
6 No. 4; today's date; time, 2:17 p.m.; "The jury would like
7 all charges read back."

8 And by "all" that means from start to finish,
9 although they may be talking about the particular crime
10 charged. So when they come in, I'll ask them if they mean
11 all from beginning to end that I gave them or do they just
12 need the specific crimes.

13 MR. GREENBERG: Do you want them to put that
14 on a note?

15 THE COURT: Yeah, it's easier, and then they
16 can tell me what they want.

17 MR. GREENBERG: Yeah. Ask the question and
18 then send them back.

19 THE COURT: Okay. We're ready.

20 THE COURT OFFICER: Jury entering.

21 (Whereupon, the jury enters the courtroom and
22 is properly seated.)

23 THE CLERK: All jurors are present.

24 Do both sides waive the reading of the roll?

25 MR. GREENBERG: Yes.

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1 MS. CHANNAPATI: So waived.

2 THE COURT: Ladies and gentlemen, I have
3 received a note dated today. The time is 2:17 p.m., and
4 the message is: "The jury would like all charges read
5 back."

6 Now, you will recall when I gave you my
7 charges I said these instructions will be in three parts.
8 The first part is a general statement of the law that is
9 applicable to all trials in criminal cases. The second
10 part is the statement of the law as it relates to this
11 particular case, and the third part was instructions
12 regarding the conduct of your jury deliberation.

13 What the Court does not know is whether you
14 want all of them, one, two, three, or just one of those
15 parts. I need to send you back into the jury room to
16 discuss that. If you want it all, you can tell me that.
17 If you want just a portion, you will tell me that by a
18 note.

19 All right.

20 (Whereupon, the jury exits the courtroom.)

21 THE COURT: The note says, "Please, read
22 charges, parts two and three."

23 MR. GREENBERG: Which are?

24 THE COURT: Which are the crimes and their
25 conduct during deliberations.

- Re-Charge -

937

1 We can have them back.

2 THE COURT OFFICER: Ready for the jury?

3 THE COURT: Yes.

4 THE COURT OFFICER: Jury entering.

5 (Whereupon, the jury enters the courtroom and
6 is properly seated.)

7 THE CLERK: All jurors are present.

8 Do both sides waive the reading of the roll?

9 MR. GREENBERG: Yes.

10 MS. CHANNAPATI: Yes.

11 THE COURT: Ladies and gentlemen, you promptly
12 gave me a note back. The time is 2:45. It says, "Please,
13 read charges, parts two and three."

14 So, as I indicated, Part 2 is a statement of
15 the law as it relates to this particular case, and Part 3
16 is instruction regarding your jury deliberations.

17 Count 1 of the indictment charges the
18 defendant with Burglary in the First Degree. Under our
19 law, a person is guilty of Burglary in the First Degree
20 when that person knowingly, as it relates to this case,
21 remains unlawfully in a dwelling with the intent to commit
22 a crime therein and when in effecting or while in the
23 dwelling or in immediate flight therefrom the person uses
24 or threatens the immediate use of a dangerous instrument.

25 Some of the terms used in this definition have

- Re-Charge -

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1 their own special meaning in our law. I'll now give you
2 the meaning of the following terms -- "dwelling,"
3 "unlawfully," "knowingly," "intent," and "dangerous
4 instrument."

5 A dwelling is a building which is usually
6 occupied by a person lodging therein at night. When a
7 building consists of two or more units separately secured
8 or occupied, each unit shall be deemed both a separate
9 building in itself and a part of the main building.

10 A person remains unlawfully in a dwelling when
11 that person has no license or privilege to remain in that
12 dwelling. To have no license or privilege to remain means
13 to have no right, permission, or authority to do so.

14 A person knowingly remains unlawfully in a
15 dwelling when that person is aware that he or she is
16 remaining in such dwelling without license or privilege to
17 do so.

18 Intent means conscious objective or purpose.
19 Thus, a person has the intent to commit a crime in a
20 dwelling when that person's conscious objective or purpose
21 is to commit a crime in that dwelling.

22 The crime of burglary is separate and distinct
23 from any crime which a person may commit within the
24 dwelling. The crime of burglary is complete when a person
25 knowingly remains in a dwelling unlawfully and does so with

- Re-Charge -

939

1 the intent to commit a crime in the dwelling, regardless of
2 whether that person ever commits or even attempts to commit
3 any crime in the dwelling.

4 Dangerous instrument means any instrument,
5 article, or substance, including a vehicle, which under the
6 circumstances in which it is used, attempted to be used, or
7 threatened to be used, is readily capable of causing death
8 or other serious physical injury, that's serious and
9 protracted disfigurement, protracted impairment of health,
10 or protracted loss or impairment of the function of any
11 bodily organ. Under that definition death or other serious
12 physical injury need not, in fact, be caused.

13 In order for to you find the defendant guilty
14 of this crime, the People are required to prove from all of
15 the evidence in the case beyond a reasonable doubt each of
16 the following four elements:

17 One, that on or about March 26th, 2003, in the
18 County of Kings, the defendant, Dennis Colon, unlawfully
19 remained in a dwelling located at 1711 East 15th Street,
20 Apartment 1-A, in Brooklyn, New York.

21 That the defendant did so knowingly, that the
22 defendant did so with the intent to commit a crime inside
23 the dwelling, that while in the dwelling or in immediate
24 flight therefrom, the defendant used or threatened the
25 immediate use of a dangerous instrument, namely, a knife.

1 Therefore, if you find that the People have
2 proven beyond a reasonable doubt each of those elements,
3 you must find the defendant guilty of the crime of Burglary
4 in the First Degree as charged in Count 1.

5 On the other hand, if you find that the people
6 have not proven beyond a reasonable doubt any one or more
7 of those elements, you must find the defendant not guilty
8 of the crime of Burglary is the First Degree as charged in
9 Count 1.

10 Count 2 of the indictment charges the
11 defendant with Rape in the First Degree. Under our law, a
12 person is guilty of Rape in the First Degree when he or she
13 engages in sexual intercourse with another person without
14 that person's consent by means of forcible compulsion.

15 I'll now give you the meaning of the following
16 terms used in that definition -- sexual intercourse without
17 a person's consent and forcible compulsion.

18 Sexual intercourse has it's ordinary meaning
19 and occurs upon penetration however slight. Sexual
20 intercourse takes place without a person's consent when it
21 results from forcible compulsion.

22 Forcible compulsion means to intentionally
23 compel, either by the use of physical force or by a threat,
24 expressed or implied, which places a person in fear of
25 immediate death or physical injury to himself or herself or

- Re-Charge -

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1 in fear that he or she will immediately be kidnapped.

2 In order for you to find the defendant guilty
3 of this crime, the People are required to prove from all of
4 the evidence in this case beyond a reasonable doubt both of
5 the following two elements:

6 One, that on or about March 26th, 2003, in the
7 County of Kings, the defendant, Dennis Colon, engaged in
8 sexual intercourse with Vera Krioutchkova, and, two, that
9 the defendant did so without Vera Krioutchkova's consent as
10 a result of the defendant's use of forcible compulsion.

11 Therefore, if you find that the People have
12 proven beyond a reasonable doubt both of those elements,
13 you must find the defendant guilty of Rape in the First
14 Degree as charged this in Count 2.

15 On the other hand, if you find that the People
16 have not proven beyond a reasonable doubt either one or
17 both of those elements, you must find the defendant not
18 guilty of the crime of Rape in the First Degree as charged
19 in Count 2.

20 Count 3 of the indictment charges the
21 defendant with the crime of Sexual Abuse in the First
22 Degree. Under our law, a person is guilty of Sexual Abuse
23 in the First Degree when he or she subjects another person
24 to sexual contact by a forcible compulsion.

25 Under our law, it is also an element of this

- Re-Charge -

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1 offense that the sexual act was committed without consent.
2 Sexual contact takes place without a person's consent when
3 the lack of consent results from forcible compulsion.

4 Some of the terms used in this definition have
5 their own special meaning in our law. I'll now give you
6 the meaning of the following terms -- sexual contact
7 without a person's consent and forcible compulsion.

8 Sexual contact means any touching of the
9 sexual or other intimate parts of a person for the purpose
10 of gratifying the sexual desire of either party. It
11 includes the touching of the actor by that person as well
12 as the touching of that person by the actor, whether that
13 is directly or through clothing.

14 I have previously defined for you the term
15 "forcible compulsion." Sexual contact takes place without
16 a person's consent when it results from forcible
17 compulsion.

18 In order for you to find the defendant guilty
19 of this crime, the People are required to prove from all
20 the evidence in the case beyond a reasonable doubt both of
21 the following two elements:

22 One, that on or about March 26th, 2003, in the
23 County of Kings, the defendant, Dennis Colon, subjected
24 Vera Krioutchkova to sexual contact by touching his finger
25 to her vagina, and, two, that the defendant did so without

- Re-Charge -

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1 Vera Krioutchkova's consent by the use of forcible
2 compulsion.

3 Therefore, if you find that the People have
4 proven beyond a reasonable doubt both of those elements,
5 you must find the defendant guilty of the crime of Sexual
6 Abuse in the First Degree as charged in Count 3.

7 On the other hand, if you find that the People
8 have not proven beyond a reasonable doubt either one or
9 both of those elements, you must find defendant not guilty
10 of the crime of Sexual Abuse in the First Degree as charged
11 in Count 3.

12 Count 4 of the indictment charges the
13 defendant with the crime of Assault in the Second Degree.
14 Under our law, a person is guilty of Assault in the Second
15 Degree when in the course of and in furtherance of the
16 commission of a felony, which in this case would be the
17 committing of the felonies of Burglary in the First Degree,
18 Rape in the First Degree, or Sexual Abuse in the First
19 Degree, that person causes physical injury to a person
20 other than one of the participants in the crime.

21 Some of the terms used in this definition have
22 their own special meaning in our law. I'll now give you
23 the meaning of the term "physical injury."

24 Physical injury means impairment of physical
25 condition or substantial pain. If you find that physical

- Re-Charge -

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1 injury was caused by the defendant, then it does not matter
2 that the physical injury was caused unintentionally or
3 accidentally rather than with an intention to cause
4 physical injury or that it resulted from the victim's fear
5 or fright.

6 I have previously defined for you the
7 underlying felony offense of Rape in the First Degree,
8 Sexual Abuse in the First Degree, and Burglary in the First
9 Degree.

10 In order for you to find the defendant guilty
11 of this crime, the People are required to prove from all
12 the evidence in the case beyond a reasonable doubt both of
13 the following two elements:

14 One, that on or about March 23th, 2003, in the
15 County of Kings, the defendant, Dennis Colon, committed the
16 crime of Burglary in the First Degree and or Rape in the
17 First Degree and or Sexual Abuse in the First Degree, and
18 that, in the course of and in furtherance of the commission
19 of any of the felonies charged herein, namely, the Burglary
20 in the First Degree and or Rape in the First Degree and or
21 Sexual Abuse in the First Degree, the defendant in the
22 commission of any of those felonies, caused physical injury
23 to Vera Krioutchkova and that Vera Krioutchkova was not a
24 participant in that felony.

25 Therefore, if you find that the People have

- Re-Charge -

945

1 proven beyond a reasonable doubt both of those elements,
2 you must find the defendant guilty of the crime of Assault
3 in the Second Degree as charged in Count 4.

4 On the other hand, if you find that the People
5 have not proven beyond a reasonable doubt either one or
6 both of those elements, you must find the defendant not
7 guilty of the crime of Assault in the Second Degree as
8 charged in Count 4.

9 Now that section of my instruction which
10 relates to the conduct of your deliberation.

11 In order to reach a verdict, each juror must
12 agree to such verdict. You have the duty as jurors to
13 consult with one another and to deliberate with a view to
14 reaching an agreement if it can be done without giving up
15 individual judgment.

16 As jurors, each one of you must decide the
17 case for yourself, but only after an impartial
18 consideration of the evidence with your fellow jurors.

19 No juror should give up any honestly held
20 conviction as to the weight or effect of the evidence
21 solely because of the opinion of your fellow jurors or for
22 the mere purpose of returning your verdict.

23 During the course of your deliberations, you,
24 as individuals, should not hesitate to re-examine your own
25 views and change your opinion if convinced it is erroneous.

- Re-Charge -

946

1 If, during the course of your deliberation,
2 your recollection of any part the testimony should fail or
3 if you find yourself in doubt concerning my instruction on
4 the law, you have the option to return to the courtroom and
5 have whatever testimony or charge read back to you.

6 Your foreperson, Juror No. 1, should write out
7 your request, sign it, and seal it an envelope, and give it
8 to the court officer and the court officer will give it to
9 me.

10 As soon as the court staff, the lawyers, and
11 the defendant are assembled, you'll be called back into the
12 courtroom, and I'll promptly respond to your request as
13 indicated.

14 Certain exhibits have been received in
15 evidence during the course of the trial. They will be
16 available to you for your examination during the course of
17 your deliberation in the jury room.

18 After you have started deliberating, you may
19 request that one or more exhibits which were received in
20 evidence be delivered to you in the jury room. In order to
21 get them delivered, simply make out that request, and
22 you've already done that.

23 In order to reach a verdict, all 12 of the
24 jury must agree. Your verdict must be unanimous. Whenever
25 all your members are in agreement on a verdict, you must

- Re-Charge -

947

1 report your verdict to the Court. When you have reached a
2 verdict, simply tell the court officer that you have
3 reached a verdict, and you will be promptly called to the
4 courtroom to announce your verdict.

5 The next instruction was about the alternates,
6 and they are discharged, and the final portion was I now
7 submit the case to you and for you to go in there and
8 render a fair and impartial verdict without fear, favor, or
9 sympathy.

10 Okay.

11 (Whereupon, the jury exits the courtroom.)

12 THE COURT: The jury has exited. We'll await
13 further word.

14 (Recess taken.)

15 THE COURT: All the parties are present. We
16 have received a note. "The jury has reached a verdict."

17 So we can call the jury in.

18 THE COURT OFFICER: Ready for the jury, your
19 Honor?

20 THE COURT: Yes.

21 THE COURT OFFICER: Jury entering.

22 (Whereupon, the jury enters the courtroom and
23 is properly seated.)

24 THE CLERK: All jurors are present.

25 Do both sides waive the reading of the roll?

- Verdict -

948

1 MR. GREENBERG: Yes.

2 MS. CHANNAPATI: So waived.

3 THE COURT: Ladies and gentlemen, I have
4 received a note indicating today's date, and the time is
5 4:10, and it says, "The jury has reached a verdict."

6 Is that so?

7 The clerk will take over.

8 THE CLERK: Will the foreperson please stand.

9 In the matter of the People of the State of
10 New York versus the Defendant, Dennis Colon, has the jury
11 agreed upon a verdict?

12 THE FOREPERSON: Yes.

13 THE CLERK: As to the first count of Burglary
14 in the First Degree, how do you find the defendant, guilty
15 or not guilty?

16 THE FOREPERSON: Guilty.

17 THE CLERK: As to the second count, Rape in
18 the First Degree, how do you find the defendant, guilty or
19 not guilty?

20 THE FOREPERSON: Guilty.

21 THE CLERK: As to the third count, Sex Abuse
22 in the First Degree, finger to vagina, how do you find the
23 defendant, guilty or not guilty?

24 THE FOREPERSON: Guilty.

25 THE CLERK: As to the fourth count of Assault

- Verdict -

949

1 in the Second Degree, how do you find the defendant, guilty
2 or not guilty?

3 THE FOREPERSON: Guilty.

4 THE CLERK: Please, be seated.

5 Members of the jury, please hear your verdict
6 as it stands recorded by the court through your foreperson.

7 You say you find the defendant, Dennis Colon,
8 as to the first count of Burglary in the First Degree,
9 guilty; as to the second count of Rape in the First Degree,
10 guilty; as to the third count of Sexual Abuse in the First
11 Degree, guilty; as to the fourth count of Assault in the
12 Second Degree, guilty.

13 Members of the jury, is that your verdict so
14 say you all?

15 (Whereupon, the jury affirms their verdict.)

16 THE COURT: Does either side wish to have the
17 jury polled?

18 MR. GREENBERG: Yes.

19 THE CLERK: Members of the jury, is the
20 verdict announced by your foreperson your verdict in all
21 respects?

22 Juror No. 1, is that your verdict?

23 JUROR NO. 1: Yes.

24 THE CLERK: Juror No. 2, is that your verdict?

25 JUROR NO. 2: Yes.

- Verdict -

950

1 THE CLERK: Juror No. 3, is that your verdict?

2 JUROR NO. 3: Yes.

3 THE CLERK: Juror No. 4, is that your verdict?

4 JUROR NO. 4: Yes.

5 THE CLERK: Juror No. 5, is that your verdict?

6 JUROR NO. 5: Yes.

7 THE CLERK: Juror No. 6, is that your verdict?

8 JUROR NO. 6: Yes.

9 THE CLERK: Juror No. 7, is that your verdict?

10 JUROR NO. 7: Yes.

11 THE CLERK: Juror No. 8, is that your verdict?

12 JUROR NO. 8: Yes.

13 THE CLERK: Juror No. 9, is that your verdict?

14 JUROR NO. 9: Yes.

15 THE CLERK: Juror No. 10, is that your

16 verdict?

17 JUROR NO. 10: Yes.

18 THE CLERK: Juror No. 11, is that your

19 verdict?

20 JUROR NO. 11: Yes.

21 THE CLERK: Juror No. 12, is that your

22 verdict?

23 JUROR NO. 12: Yes.

24 THE CLERK: The jury affirms the verdict as

25 their own.

- Verdict -

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1 THE COURT: Ladies and gentlemen of the jury,
2 the Court thanks you for your dedicated service in this
3 case. As jurors, thank you for the care, concern,
4 attention, and concentration that you have given to your
5 deliberation.

6 Here, the Court thanks each and everyone of
7 you. Neither this court or any other court could function
8 without a jury such as you.

9 Ladies and gentlemen, the jury is a touchstone
10 of freedom under the law which we all hold dearly. Your
11 service as jurors is one of the highest duties which any
12 citizen could be called upon to perform.

13 In the fulfillment of your service as members
14 of the jury, you have reflected the best traditions of a
15 free society.

16 Prior to leaving the courtroom, for your
17 information, the law zealously guards the secrecy of your
18 deliberation. You need not open to anyone anything
19 concerning your deliberation -- what you said, what you
20 talked about, what your fellow jurors said. As jurors,
21 whatever you decide may remain locked in the secrecy that
22 surrounded your deliberation. The book is closed.

23 On the other hand, you are free to discuss the
24 case with anyone whom you choose. The choice is yours.
25 You're now dismissed. I want to thank you again for your

- Verdict -

952

1 excellent service.

2 (Whereupon, the jury exits the courtroom.)

3 THE COURT: The Court is still in session.

4 The jury has exited.

5 Let me hear from either side.

6 MS. CHANNAPATI: Your Honor, at this time the
7 People request remand.

8 THE COURT: The People are requesting remand.

9 There was pending a motion for trial order of
10 dismissal. That is denied at this time.

11 Anything else?

12 MR. GREENBERG: I would just move to ask for a
13 directed verdict.

14 THE COURT: In other words, you're moving to
15 set aside that verdict?

16 MR. GREENBERG: Yes.

17 THE COURT: Counsel, you can put that in
18 writing.

19 I'm going to set aside a date for sentence.

20 THE CLERK: 7/20.

21 THE COURT: The date has been suggested as
22 July 20th.

23 MR. GREENBERG: Yes, that's fine.

24 THE COURT: 7/20.

25 Of course, Counsel, any motion would give the

- Verdict -

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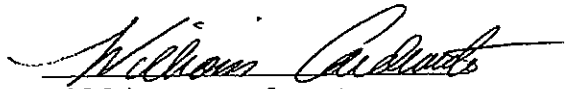
1 People time to respond and the Court time to decide it.

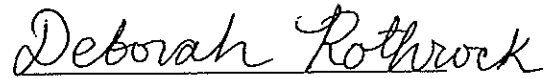
2 The defendant is remanded.

3 Exonerate the bail.

4 (End of proceedings.)

5
6
7
8
9
10
11 It is hereby certified that the foregoing is a
12 true and accurate transcript of the proceedings.
13
14
15

16 
17 William Cardenuto
18 Senior Court Reporter

19 
20 Deborah Rothrock
21 Senior Court Reporter
22
23
24
25

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS : CRIMINAL TERM : PART 4

-----X

THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NO.
3718/06

- against - :

JEFFREY MILLER :

DEFENDANT : CALENDAR CALL

-----X

320 JAY STREET
BROOKLYN, NEW YORK 11201

SEPTEMBER 24, 2007

BEFORE: HONORABLE MATTHEW J. D'EMIC, JUSTICE

APPEARANCES:

CHARLES J. HYNES, ESQ.
District Attorney, Kings County
BY: ENETRA PATTERSON, ESQ.
Assistant District Attorney

PETER GUADAGNINO, ESQ.
Attorney for Defendant
50 Court Street
Brooklyn, New York____

VINCENT M. GERALDI, JR.
SENIOR COURT REPORTER

PROCEEDINGS

2.

1 THE CLERK: Calendar number two, Indictment
2 3718 of '06, Jeffrey Miller.

3 MR. GUADAGNINO: For Mr. Jeffrey Miller,
4 Peter Guadagnino, 50 Court Street, Brooklyn, New York.

5 Good morning.

6 THE COURT: Good morning.

7 MS. PATTERSON: Enetra Patterson, for the
8 People.

9 Your Honor, defense counsel spoke with the
10 assistant and told him that he wouldn't be ready today.
11 The assistant is asking for October 3rd.

12 MR. GUADAGNINO: Is it possible to get
13 October 9th, a firm trial date, the day after
14 Columbus Day?

15 THE COURT: Yes.

16 Actually, that's a Tuesday. So, how is
17 October 11th?

18 MR. GUADAGNINO: That's fine, Judge.

19 THE COURT: October 11th, a firm trial date.

20 MR. GUADAGNINO: Thank you, your Honor. I
21 appreciate it.

22 THE COURT: All right. Thank you.

23 MR. GUADAGNINO: Yes.

24 Your Honor, my client and I have discussed
25 very briefly the possibility that he may opt for a bench

PROCEEDINGS

3

1 trial. That hasn't been fully decided yet. I just
2 wanted to let the Court know that in anticipation of the
3 October 11th date.

4 THE COURT: All right. I would just say a
5 couple of things. He can make that decision at the
6 time --

7 MR. GUADAGNINO: Yes.

8 THE COURT: -- and he would have to waive his
9 right to a jury in writing. You know, he's giving up
10 his right to a jury, that means he wants me to try the
11 facts as well as be the arbiter of the law in the case.

12 I just want everybody to know, you know, I
13 call it as I see it. It's not like a bench trial with a
14 wink, and, you know, you get a certain result. I'll
15 listen to the evidence, and I'll see what it shows.

16 Okay?

17 MR. GUADAGNINO: That's right.

18 THE COURT: You understand that, right,
19 Mr. Miller?

20 THE DEFENDANT: Yes.

21 THE COURT: I just want everybody to know
22 that.

23 Okay?

24 MR. GUADAGNINO: Yes, Judge.

25 THE COURT: All right.

PROCEEDINGS

4

1 It wouldn't be the first one I did. I just
2 want everybody to understand that.

3 You can think about it, talk to each other,
4 and let me know what you want to do.

5 MR. GUADAGNINO: I'll try and let the Court
6 know before that date.

7 THE COURT: All right. That'll be nice. But
8 if you don't, you know. It's a big decision, so you'll
9 make it together.

10 MR. GUADAGNINO: Thank you, your Honor.

11 THE COURT: Would he like a visit with his
12 wife?

13 THE DEFENDANT: Yes.

14 Thank you.

15 MR. GUADAGNINO: Thank you, your Honor.

16 THE COURT: Okay.

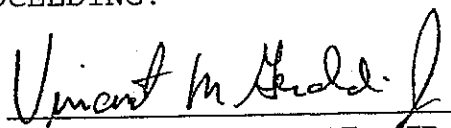
17 (Courtroom visit granted)

18 * * * * *

19 (At this time, the above-captioned matter is
20 adjourned to October 11, 2007, for further proceedings)

21 * * * * *

22 CERTIFIED TO BE A TRUE AND ACCURATE
23 TRANSCRIPT OF THE MINUTES TAKEN IN THE
24 ABOVE-CAPTIONED PROCEEDING.

25 
VINCENT M. GERALDI, JR.
SENIOR COURT REPORTER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - TRIAL TERM - PART 3

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DENNIS COLON,

Defendant.
-----X

Indictment

No. 2518/03

INDETERMINATE SENTENCE

320 Jay Street

Brooklyn, New York 11201

July 20, 2006

B E F O R E:

THE HONORABLE JAMES P. SULLIVAN,
Justice

A P P E A R A N C E S:

THE HONORABLE CHARLES J. HYNES
DISTRICT ATTORNEY - KINGS COUNTY
Attorney for the People
350 Renaissance Plaza
Brooklyn, New York 11201
BY: ANITA CHANNAPATI, ESQ.
Assistant District Attorney

HARLEN GREENBERG, ESQ.
Attorney for the Defendant
30 Vesey Street
New York, New York

DAVID R. SEDACCA
OFFICIAL COURT REPORTER

DRS

1 THE CLERK: This is calendar number one on the
2 Part 3 Calendar, Indictment Number 2518 of 2003.

3 Counsel, your appearances.

4 MR. GREENBERG: Harlen Greenberg, 30 Vesey
5 Street, New York, New York.

6 MS. CHANNAPATI: Anita Channapati, the office
7 of the District Attorney.

8 Good morning, your Honor.

9 THE COURT: Good morning.

10 This is People versus Dennis Colon, number one
11 on the calendar.

12 The case is on today for sentence.

13 The People have previously sent the Court a
14 letter whereby the People are asking for a sentence of
15 the maximum time on a consecutive basis which would be 25
16 plus 25 which would be 50 years' jail.

17 The defendant has sent in a package which
18 consists of letters of support and also a memorandum
19 regarding Mr. Colon.

20 I have in the file, of course, a report from
21 the Department of Probation, and I'll just take a look at
22 it.

23 (Pause in the proceedings.)

24 THE COURT: The one thing I'm trying to figure
25 out -- yes. With regard to the defendant's statement,

1 the first part of it is from the Probation Department.
2 They obtained their information from reviewing the court
3 file, but then they do indicate that on June 13th, 2006,
4 the defendant was interviewed, and they say he denies
5 commission of this offense.

6 With regard to the Victim's Impact Statement,
7 they were not able to contact the victim so there is no
8 statement from the victim.

9 Other than that, the Probation Department
10 summary, the last paragraph says: "The defendant emerges
11 as an individual who presents a serious risk to the
12 community. Incarceration is mandatory. With
13 incarceration, the defendant may benefit from
14 sexual-offender counseling."

15 So we have all of that on the record now. It
16 would be time to proceed to sentence unless I hear
17 anything from either side.

18 MS. CHANNAPATI: Nothing, your Honor.

19 MR. GREENBERG: No.

20 THE COURT: The clerk will ask some questions.

21 THE CLERK: Mr. Colon, you're before this Court
22 for sentencing following your conviction after trial to
23 the crimes of Burglary in the First Degree, Rape in the
24 First Degree, Sexual Abuse in the First Degree and
25 Assault in the Second Degree.

1 Before pronouncing sentence, the Court will
2 allow you, your attorney and the District Attorney to
3 address the Court.

4 MS. CHANNAPATI: Your Honor, very briefly, you
5 heard the testimony at trial. The jury found the
6 defendant guilty of all charges, and we ask that he be
7 sentenced appropriately.

8 THE COURT: All right.

9 Defense counsel?

10 MR. GREENBERG: Your Honor, you had an
11 opportunity to review the memorandum that I submitted.

12 Mr. Colon -- this is Mr. Colon's -- this was
13 Mr. Colon's first arrest, first contact with the criminal
14 justice system in any way. He has lived a life
15 essentially whereby he has helped the community over the
16 course of his employment, starting at the age of 19, up
17 until the time of his arrest, and actually after this
18 arrest helping the community with housing issues and
19 helping the people who had difficulty with their homes
20 and landlords over a long, long period of time. He's had
21 a long history of community involvement, community
22 service.

23 I also submitted over a dozen letters from
24 people who Mr. Colon has had contact with over the last
25 15 years. These people have indicated that had Mr. Colon

Sentence/Colon

1 has always been an individual that was accessible,
2 helpful, polite and community-minded.

3 I'm going to ask you to take all of that into
4 consideration, your Honor, when you sentence Mr. Colon.

5 I would also just like to point out to the
6 Court that approximately a year and a half ago, not with
7 this assistant, but with a prior assistant, Miss Cohn,
8 there were some serious discussions with respect to a
9 plea. At that point -- and this was after I had
10 submitted the previous pre-pleading memo. Miss Cohn and
11 I had engaged in another round of plea discussions. Miss
12 Cohn had essentially offered me and asked whether Mr.
13 Colon would be interested in an eight-year sentence.

14 I had discussions with Mr. Colon at that point,
15 and at that time he had rejected that offer.

16 But, at that point in time, that was the
17 People's position even after that. Prior to that, their
18 recommendation was substantially higher.

19 At that point, after this case had been pending
20 for a long time, they had an idea and a position that had
21 substantially changed even after the pre-pleading memo
22 that was submitted where we discussed the recommendation
23 with the Court.

24 I'd also like to point out that for the entire
25 time this case was pending Mr. Colon was out,

1 responsible, just as he has been throughout his entire
2 life.

3 I'm going to ask you to take all of this into
4 consideration when sentencing him. I'm going to ask you
5 to sentence him closer to the minimum allowable under the
6 law. He has broad range with respect to the top charges,
7 and I'm going to ask that you sentence him concurrently
8 on all charges and sentence him to something closer to
9 the minimum rather than the maximum.

10 THE COURT: Well, in this case the Court
11 certainly --

12 MR. GREENBERG: Your Honor?

13 THE COURT: Yes. The defendant wants to make a
14 statement?

15 (Defendant and counsel confer off the record.)

16 (Pause in the proceedings.)

17 THE DEFENDANT: Your Honor, I just wanted to
18 say that the reason I have cooperated in this case since
19 the very beginning and continue to do so is because I
20 have always thought since the beginning of this case that
21 this has been a horrible misunderstanding. I thought
22 that would come to light in our testimonies.

23 For legal reasons, I wasn't allowed to testify
24 or state my part of the story, but my thoughts were that
25 this would all be cleared up and it would come to light

Sentence/Colon

1 from the very beginning.

2 THE COURT: All right. Is that your statement,
3 Mr. Colon?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 The Court, as I was going to say, has had
7 familiarity with this case. It certainly was one of the
8 cases I got from the start of the sex crimes part, and I
9 had looked at the various, shall I say, legal arguments
10 that were raised.

11 I would note that there were discussions
12 regarding a possible plea. I did write sometime ago that
13 there had been discussions regarding an eight-year
14 offer. I believe that there were discussions that I did
15 not write that the Court had unofficially offered ten
16 years. So, certainly, those numbers would be relevant in
17 any consideration.

18 The Court has looked at the letters, and,
19 clearly, Mr. Colon has led an exemplary life but for this
20 event. He did state to the Probation Department that he
21 maintains his innocence, and I always say at sentence you
22 may maintain your innocence but it has to be before an
23 appeals court. As far as this Court is concerned, you
24 are guilty because the case was taken to trial before a
25 jury and the jury found you guilty of all charges.

Sentence/Colon

1 Therefore, the only possible change in the
2 concept of guilt is if for whatever reason an appeals
3 court makes their decision. But I don't look at that.
4 I'm not an appellate court. I can look at the aspects
5 before me, that you were convicted of these crimes after
6 a trial by jury.

7 The sentence will now be imposed: With regard
8 to burglary one and burglary two -- I'm sorry -- burglary
9 one and rape one, 25 years' jail, concurrent. Then five
10 years' jail on sex abuse one, consecutive. That's a
11 total of 30 years' jail. Five years' post-release.
12 Final order of protection. Mandatory surcharge and court
13 fees will be taken out of inmate funds. The sentence is
14 imposed.

15 MR. GREENBERG: Your Honor, may we approach for
16 just a second?

17 THE COURT: Yes.

18 (Discussion held off the record.)

19 (Pause in the proceedings.)

20 THE COURT: I am reminded that there is another
21 charge that we have to cover. Burglary one, rape one,
22 sex abuse one and assault two. So the assault two gets
23 included. On assault two he gets five years' concurrent
24 with the five on sex abuse one. The sentence is
25 imposed.

Sentence/Colon

1 MS. CHANNAPATI: Your Honor, I'm going to be
2 handing up an Order of Protection.

3 THE COURT: I'll sign it.

4 MR. GREENBERG: I've advised my client of his
5 right to appeal.

6 THE COURT: Yes, and that is on the record.

7 The Court is being handed up the Order of
8 Protection and the Court is signing it.

9 Thank you.

10 MS. CHANNAPATI: Thank you, your Honor.

11

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* * * *

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21

It is hereby certified that the
foregoing is a true and accurate
transcript of the proceedings.

22

23

DAVID R. SEDACCA
OFFICIAL COURT REPORTER

24

25

DRS